SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 1035

THE UNITED STATES OF AMERICA, APPELLANT

vs.

YELLOW CAB COMPANY, CHICAGO YELLOW CAB COMPANY, INC., PARMELEE TRANSPORTATION COMPANY, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

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1 [Caption omitted.]

2 In the District Court of the United States for the Northern District of Illinois, Eastern Division

Civil Action No. 46C1330

Equitable Relief Sought

UNITED STATES OF AMERICA

v.

YELLOW CAB COMPANY, CHICAGO YELLOW CAB COMPANY, INC., PARMELEE TRANSPORTATION COMPANY, CAB SALES AND PARTS CORPORATION, CHECKER TAXI COMPANY, CHECKER CAB MANUFACTURING CORPORATION, AND MORRIS MARKIN

Complaint

(Filed July 25, 1946)

The United States of America, by its attorneys, acting under the direction of the Attorney General, brings this complaint against the defendants named herein, and upon information and belief alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and these proceedings are instituted under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," said Act being commonly known as the Sherman Act," against the defend-
3 ants named herein in order to prevent and restrain violations by them of Sections 1 and 2 of said Act.

2. The defendants Yellow Cab Company, Chicago Yellow Cab Company, Inc., Parmelee Transportation Company, Cab Sales and Parts Corporation, and Checker Taxi Company transact business within the Eastern Division of the Northern District of Illinois, and are found therein.

II

DESCRIPTION OF THE DEFENDANTS

3. The following corporations and persons are hereby named defendants herein:

"(a) Yellow Cab Company, a Maine corporation, with principal offices at 57 East 21st Street, Chicago, Illinois. This defendant is hereinafter referred to as 'Yellow.' It operates the 'Yellow' cabs in Chicago, Illinois, and vicinity.

"(b) Chicago Yellow Cab Company, Inc., a New York corporation, with principal offices at 57 East 21st Street, Chicago, Illinois. This defendant is hereinafter referred to as 'Chicago Yellow.' It is a holding company owning all of the capital stock of Yellow as well as all of the capital stocks of Benzoline Motor Fuel Co., an Illinois Corporation, and Utilities Motor Fuel Co., Inc., an Indiana corporation. These two concerns sell gasoline and oil in Chicago and vicinity, primarily to cab operating companies. Chicago Yellow also owns 49 percent of the capital stock of Transportation Maintenance Corporation, an Illinois corporation, which services and repairs cabs in Chicago, as well as 45 percent of the capital stock of General Transportation Casualty and Surety Co., a New York corporation, which insures cab operating companies; and 7.8 percent of the capital stock of defendant Checker Cab Manufacturing Corporation.

4 "(c) Parmelee Transportation Company, a Delaware corporation, with principal offices at 300 North Desplaines Street, Chicago, Illinois. This defendant is hereinafter referred to as 'Parmelee.' It operates cabs in Chicago to transport passengers and their luggage from one railroad station to another, pursuant to contracts with railroads and railroad terminal associations. Parmelee owns 29.5 percent of the outstanding capital stock of Chicago Yellow, and 10 percent of the capital stock of General Transportation Casualty and Surety Co. It also owns all of the capital stock of each of the following corporations:

"'(1) National Transportation Co., Inc., a New York corporation, which operates cabs in New York, N. Y.;

"'(2) Parmelee System, Inc., a New York corporation, which, among other things, manages the operations of National Transportation Co., Inc.;

"'(3) Yellow Cab Company of Pittsburgh, a Pennsylvania corporation, which operates cabs in Pittsburgh, Pennsylvania;

"'(4) Pittsburgh Transportation Company, a Pennsylvania corporation which also operates cabs in Pittsburgh; and

"'(5) Yellow Taxi Company of Minneapolis, a Minnesota corporation, which operates cabs in Minneapolis, Minnesota.'

"(d) Checker Cab Manufacturing Corporation, a New Jersey corporation, with principal offices at Kalamazoo, Michigan. This defendant is hereinafter referred to as 'CCM.' It manufactures and sells cabs. CCM owns 61.75 percent of the outstanding capital stock of Parmelee and 30 percent of the capital stock of General Transportation Casualty and Surety Company.

"(e) Cab Sales and Parts Corporation, an Illinois corporation, with principal offices at 1401 West Jackson Boulevard, Chicago, Illinois. It operates the 'Checker' cabs in Chicago and vicinity. A predecessor corporation of the same name was incorporated in Delaware in 1930. In 1938, the assets of the predecessor were transferred to the defendant corporation and the predecessor was dissolved. Both concerns are hereinafter referred to as 'Cab Sales.' Cab Sales owns 1.59 percent of the outstanding capital stock of Chicago Yellow, 15 percent of the capital stock of General Transportation Casualty and Surety Co., and 51 percent of Transportation Maintenance Corporation. It also owns 35.7 percent of the outstanding capital stock of CCM.

"(f) Checker Taxi Company, a Delaware corporation, with principal offices at 1401 West Jackson Boulevard, Chicago, Illinois. It operated 'Checker' cabs in Chicago and vicinity from December 1931 until about 1941. Its predecessor of the same name, an Illinois corporation, operated 'Checker' cabs in Chicago and vicinity from about 1919 until its operations were transferred to the defendant. Both concerns are hereinafter referred to as 'Checker.' At the present time, Checker has no employees and no property other than an interest in 1,000 taxicab licenses issued to it annually by the city of Chicago, which licenses are leased by it to Cab Sales for $180 per year per license. Four hundred fifty shares of the capital stock of Checker are owned by 18 former cab drivers, who possess 25 shares each, and the remaining 60,550 shares are owned by a partnership composed of Michael M. Sokoll, George McDonald, Julius Jessner, R. E. Oakland, J. E. King, and M. H. Freimark, each of whom are officers, directors, or former officers or directors, of either Cab Sales or CCM.

"(g) Morris Markin, president of CCM, and a resident of Kalamazoo, Michigan. Markin owns all of the capital stock of Cab Sales, 12.2 percent of the outstanding capital stock of CCM, and 0.13 percent of the outstanding capital stock of Chicago Yellow."

III

NATURE OF THE TRADE AND COMMERCE INVOLVED

4. The city of Chicago, Illinois, is the terminus of a large number of railroads engaged in the transportation of passengers among a majority of the States of the United States. A few passengers are transported through Chicago by rail, but it is necessary for the great majority of them, including those traveling from one State to another, to get off the trains by which they treveled to Chicago, to go to another station from two city blocks to two miles distant, and to board other trains operated by other railroads. A sub-

stantial number of said passengers in interstate commerce use cabs operated by Yellow, Cab Sales, Parmelee, and others, in transporting themselves and their luggage from one station to another as aforesaid.

5. Many persons, in the course of travel from their homes, offices, or hotels in Chicago to destinations in other States, commence their travel by using cabs operated by Yellow, Cab Sales, and others to transport themselves and their luggage to railroad stations in Chicago.

6. Many persons in the course of travel from points in other States to homes, hotels, and offices in Chicago complete said travel by using cabs operated by Yellow, Cab Sales, and others to transport themselves and their luggage from railroad stations in Chicago to said homes, hotels, and offices.

7. CCM manufactures motor vehicles for use as cabs at its factory in Kalamazoo, Michigan, and ships them to Parmelee, Yellow, and Cab Sales in Chicago, Illinois. CCM also ships them to subsidiaries of Parmelee in New York City, Pittsburgh, and Minneapolis. All motor vehicles purchased by Cab Sales for use as cabs, and all purchased by Chicago Yellow and the cab-operating
7 subsidiaries of Parmelee, between the time Parmelee acquired part of their stock and the beginning of the investigation leading to this complaint, have been manufactured by CCM and sold and shipped in interstate commerce from Kalamazoo, Michigan.

IV

BACKGROUND OF THE CONSPIRACY

8. In the month of January 1929, when the conspiracy alleged herein began:

"(a) Yellow, as now, was engaged in operating 'Yellow' cabs in Chicago. It held 2,350, or 44 percent of the 5,289 taxicab licenses issued by the city of Chicago; and it had never purchased cabs from CCM.

"(b) Chicago Yellow, as now, owned all of the capital stock of Yellow. It did not own any stock of CCM.

(c) Parmelee had not been incorporated. The present cab-operating subsidiaries of Parmelee, and their predecessors, were independent concerns. The business of transporting passengers between railroad stations in Chicago pursuant to contracts with railroads and railroad terminal associations was conducted by The Parmelee Company, a corporation which was dissolved in May 1934. Neither The Parmelee Company nor any of the present cab-operating subsidiaries of Parmelee, nor their predecessors, owned any stock of Chicago Yellow.

"(d) Checker was a so-called 'cooperative' cab operating company in Chicago. It held 1,750 city taxicab licenses, or 33 percent of the 5,289 issued. Its stockholders consisted of a large number of owners of 'Checker' cabs. Each stockholder contracted with Checker to pay a fee or commission for services rendered by Checker in repairing and maintaining his cabs, providing
8 gasoline, oil, tires, and parts, insurance, licensing, and legal and other services. Each cab owner also agreed that the record title of his cabs should rest in Checker, that Checker would take out city licenses for said cabs in its own name, and would permit said stockholders to use said city licenses in the operation of their cabs.

"(e) CCM did not own any stock in Chicago Yellow, Checker, or The Parmelee Company.

"(f) Markin was president and general manager of CCM."

9. The city of Chicago issued 5,289 taxicab licenses in 1929, of which, in addition to the 2,350 issued to Yellow and 1,750 to Checker, 400, or 8 percent, were issued to DeLuxe Motor Cab Company, a substantial part of which was owned by Markin, and the remaining 789, or 15 percent, were issued to others.

10. Prior to 1929, the ordinances of the city of Chicago did not restrict or limit the number of taxicab licenses which might be issued. In September of that year, the city of Chicago enacted an ordinance providing that no taxicab licenses should thereafter be issued unless the Public Vehicle License Commission should, after hearing, by resolution, declare that public convenience and necessity required the issuance of such licenses, provided that such declaration of public convenience and necessity should not be necessary for the licensing of the same number of taxicabs licensed for operation and operated by the applicant under the same name and colors on September 15, 1929, or the renewal annually thereafter of the same number of licenses.

11. In May 1934, the city of Chicago enacted an ordinance providing that no license should thereafter be issued except upon transfer to permit replacement of a taxicab, or, in the
9 annual renewal of outstanding licenses, unless the Public Vehicle License Commission, after a hearing, by resolution, should declare that public convenience and necessity required additional taxicab service.

12. On December 22, 1937, the city of Chicago enacted an ordinance providing that in the event that a sufficient number of taxicab licenses should be surrendered by licensees to reduce the number of taxicabs in the city of Chicago to 3,000 on or before March 31, 1938, no taxicab license should thereafter be issued except upon transfer to permit replacement of a taxicab or in the annual renewal of any such license, or upon assignment of any such license, or upon

assignment of the right to apply for such license as subsequently provided, or upon the revocation for cause or termination in any other manner of any other license. This ordinance further provided that the city of Chicago, by ordinance, might authorize the issuance of licenses in excess of 3,000 without consent of existing licensees, provided that those licensees who voluntarily surrendered any taxicab licenses or their right to renew any taxicab licenses on or before March 31, 1938, should have the prior right to secure licenses issued above the figure of 3,000, up to the number of licenses so surrendered by them, unless such licensees should have released their right to apply for such additional licenses or should have failed to make application therefor within thirty days after publication of notice of public hearing upon the question of public convenience and necessity for the issuance of additional licenses. The ordinance further provided that as between licensees having a prior right by virtue of their surrender of licenses, to any new licenses in excess of 3,000, additional licenses should be apportioned ratably between such licensees having such prior right in the proportion which the number of licenses surrendered by each licensee bears to the number surrendered by all licensees. The ordinance further provided that it should become effective when one or more licensees should file with the City Clerk formal written acceptance of the ordinance and should have surrendered at least 616 taxicab licenses. The 1937 ordinance expired, by its terms, on December 31, 1945, but, in June 1945, was extended for another five years.

13. The Circuit Court of Cook County held, in February 1946, in a suit by Yellow and Checker against the city of Chicago, that the acceptance of the 1937 ordinance by Yellow and Checker constituted a contract between the city of Chicago and Yellow and Checker. It also held that, by the terms of this contract, the city of Chicago was precluded from issuing taxicab licenses in excess of 3,000 without the consent of Yellow and Checker until after it had first replaced those surrendered by Yellow and Checker in 1938.

14. At the time of filing this complaint, about 3,275 cab licenses were outstanding in the city of Chicago, of which 1,595 were issued to defendant Yellow, 1,000 to defendant Checker, which leased them to Cab Sales, and 680 were issued to so-called "independents." (When the investigation leading to this complaint was begun early in March 1946, there were only 3,000 outstanding licenses and only 405 issued to independents.) In addition, Parmelee operates 85 non-licensed cabs in transferring passengers between railroad stations in Chicago. Defendant Markin controls

the management and operations, including purchases of motor vehicles for use as cabs, of Yellow, Cab Sales, and Parmelee.

11 15. Some 13,000 licenses to operate cabs are now outstanding in the city of New York, of which 2,000 are held by National Transportation Co., Inc., a wholly owned subsidiary of defendant Parmelee. The purchase of motor vehicles for use as cabs by National Transportation Co., Inc. is controlled by Markin.

16. One-half of the cabs in Pittsburgh are operated by Pittsburgh Transportation Co., and the other half are operated by Yellow Cab Co. of Pittsburgh. Both of these concerns are wholly owned subsidiaries of Parmelee and their purchase of motor vehicles for use as cabs is controlled by Markin.

17. Of the 214 cabs licensed in Minneapolis, 125 are operated by Yellow Taxi Co. of Minneapolis which is a wholly owned subsidiary of Parmelee. The purchase of motor vehicles for use as cabs by this concern is controlled by Markin.

V

OFFENSES CHARGED

18. Beginning about January 1929 and continuing thereafter up to and including the date of filing this complaint, the defendants have been and now are engaged in a combination and conspiracy to restrain and to monopolize interstate trade and commerce in the sale of motor vehicles for use as cabs to the principal cab operating companies in Chicago, Illinois, Pittsburgh, Pennsylvania, New York, New York, and Minneapolis, Minnesota, and in the business of furnishing cab services for hire in the city of Chicago, Illinois, and its vicinity, in violation of Sections 1 and 2 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," said Act being

12 commonly known as the "Sherman Act." Defendants threaten to continue such offenses and will continue them unless the relief hereinafter prayed for in this complaint is granted.

19. The aforesaid combination and conspiracy to restrain and to monopolize has consisted of a continuing agreement and concert of action among the defendants, the substantial terms of which have been that defendants agree:

"(a) To control the operation, and the purchase, of motor vehicles for use as cabs, by the principal cab-operating companies in Chicago, New York, Pittsburgh, and Minneapolis;

"(b) That each such operating company will purchase and use as cabs only motor vehicles manufactured by CCM; and will not purchase for such use, or use, any motor vehicles made by other cab or automobile manufacturers;

"(c) Yellow and Cab Sales will not attempt to compete with Parmelee for contracts with railroads or railroad terminal associations to transport passengers and their luggage between railroad stations in Chicago;

"(d) Parmelee will not compete with Yellow or Cab Sales by seeking to engage, or engaging in the business of transporting passengers for hire in the city of Chicago and its vicinity except by contract with railroads and railroad terminal associations;

"(e) To reduce the total number of taxicabs operated in the city of Chicago to 3,000, thereafter to induce the city of Chicago to enact an ordinance reducing the total number of taxicab licenses issued to 3,000, and to oppose and prevent any increase in the number of said taxicabs and licenses above 3,000;

"(f) That Yellow and Checker will hold 2,595 of the 3,000 licenses issued by the city of Chicago, dividing them 1,595 to Yellow and 1,000 to Checker; that they would secure and divide among themselves, in a ration of 60 percent to Yellow and 40 percent to Checker, any licenses above 3,000 which might be subsequently issued by the city of Chicago;

"(g) That Checker will lease all of its licenses to Cab Sales for $180 per year per license;

"(h) Yellow and Cab sales will not compete with each other by using a make or style of cab other than that manufactured by CCM or by providing more or better service to passengers; and

"(i) That Checker and Yellow would prevent new operators, including veterans, from entering the cab business in Chicago and vicinity by annually renewing cab licenses for cabs they did not operate and had no intention of operating."

Said combination and conspiracy has been formed and effectuated by divers means and methods, including the acts, agreements, and understandings hereinafter set forth.

20. About January 1929, Markin, then president of CCM, Ernest H. Miller, president of Yellow Taxi Corp., New York, and J. A. Sisto & Co., investment bankers owning 20 percent of the outstanding stock of CCM, commenced negotiations to merge the more important cab operating companies in New York, Chicago, and other cities. One of the principal purposes of the proposed merger was to insure that these cab operating companies would thereafter purchase all of their motor vehicles for use as cabs from CCM and would not buy them from competitors of CCM. This plan of merger was thereafter carried out.

21. In furtherance of the plan, defendant Parmelee was organized April 12, 1929. It was financed in part by CCM, which purchased preferred stock and debentures for about $1,400,000. Ernest H. Miller became the first president and a director of Parmelee. Two of the other directors were also directors of CCM.

14 In return for its stock and debentures, Parmelee promptly acquired 26 percent (106,819 shares) of the outstanding stock of Chicago Yellow, 96 percent (19,300 shares) of the outstanding stock of The Parmelee Company, 68 percent (85,659 shares) of Yellow Taxi Corp., New York, and $2,052,417.50 in cash. During June 1929, Parmelee purchased an additional 8,350 shares of Chicago Yellow. During the same year, it purchased the remainder of the stock of The Parmelee Company and 22,341 shares of Yellow Taxi Corp., New York, to increase its holdings in the latter company to 86 percent of the total stock.

22. The Parmelee Company was dissolved in May 1934 and its business of transporting passengers between railroad stations in Chicago was taken over by defendant Parmelee.

23. Parmelee has, since its first acquisition of stock in Chicago Yellow, continuously owned a sufficiently large number of shares of such stock to control the policies and operations of Chicago Yellow and has controlled them. Parmelee's control of Chicago Yellow has, in turn, been controlled by Markin.

24. The operation of cabs in New York City by the various cab-operating companies acquired by Parmelee from time to time following 1929, including Yellow Taxi Corp., New York, and Motor Cab Transportation Co., have now been consolidated in National Transportation Co., Inc., a wholly owned subsidiary of Parmelee. Motor Cab Transportation Co. was purchased by Parmelee from CCM in September 1930, and 422,787 shares of common stock of Parmelee was paid to CCM as part of the transaction. Since the acquisition of this stock, CCM has continuously owned more than 51 percent of the capital stock of Parmelee.

25. Parmelee acquired 74 percent of the capital stock of

15 Yellow Cab Company of Pittsburgh in June 1929, and another 9.7 percent before the end of 1929. Parmelee has continuously owned more than 51 percent of said stock ever since. In October 1929, Parmelee acquired all of the outstanding stock of Pittsburgh Transportation Company and has continuously owned said stock ever since. In June 1930, Parmelee acquired Red Cab Company, a competing Pittsburgh cab-operating company, and merged its operations with its other two Pittsburgh subsidiaries, thereby acquiring a complete monopoly of the business of operating cabs in Pittsburgh.

26. Parmelee caused the formation of Yellow Taxi Company of Minneapolis, a Delaware corporation, in February 1931, to operate

cabs in Minneapolis. Parmelee acquired all of its stock upon its formation, and owned it at least until December 31, 1933. The assets of the Delaware corporation were then transferred to a Minnesota corporation of the same name in return for the capital stock of the latter. The Delaware corporation was then dissolved. Parmelee has continuously owned all of the capital stock of the Minnesota corporation since the dissolution of the Delaware concern.

27. In October 1929, DeLuxe Motor Cab Company was the third largest concern operating cabs in Chicago, with about 400 city taxicab licenses, and a substantial interest in DeLuxe was owned by Markin. At that time, Markin offered to sell all stock in DeLuxe to Parmelee for $388,000, or $100,000 and 16,000 shares of Parmelee, Parmelee also to assume liability for $332,000 in mortgages notes held by CCM. DeLuxe owned approximately 308 cabs, valued at about $363,000. Parmelee considered that, although DeLuxe had been losing money, its net worth, aside from the value of its taxicab licenses, exceeded its liabilities by about $92,000 as of August
16 1929. Parmelee also considered that the value of the city taxicab licenses held by DeLuxe, because of the 1929 city ordinance tending to limit the number of taxicab licenses in Chicago, was at least $1,000 per license, or $400,000. In addition, Parmelee considered that the purchase of the DeLuxe stock would be of value since such purchase would effectively prevent other interests not then operating in Chicago from acquiring DeLuxe and Parmelee would "control the operation of two out of the three large operating companies" in Chicago. These three were Yellow, DeLuxe, and Checker. Parmelee accepted the proposal of Markin and in February 1930 purchased, through General Transportation Company, a wholly owned subsidiary of Parmelee formed for this purpose, all outstanding stock of DeLuxe for $388,000, it being agreed that Markin and one Paul L'Amoreaux, who also owned a substantial interest in DeLuxe, would purchase 16,000 shares of Parmelee stock at $18 per share.

28. In 1930 Parmelee and M. M. Sokoll, president and director of Checker, caused the consolidation of DeLuxe and certain independent cab companies into a new company, Chicago Cab Company, one of the purposes of the consolidation being to prevent some outside company from entering the taxicab operating field in Chicago in competition with Yellow. In 1932, Cab Sales acquired a substantial interest in Chicago Cab Company. In July 1932, it caused the company to suspend operations and the drivers to enter into contracts with Checker. This action was approved by CCM as it would assist in preventing interests hostile to CCM from obtaining a competitive position in Chicago.

29. The Transportation Management Corp., a Delaware corporation, became a wholly owned subsidiary of Parmelee in
17 April 1929, and in that month it entered into so-called management contracts with Yellow, The Parmelee Company and Yellow Taxi Corp., New York. These contracts were substantially identical in their terms except for amounts of payments to be made by the cab operating companies. Each operating company agreed, among other things, that it would not make any purchase of more than $500 without consulting and obtaining the approval of the management company, and that all purchases, the advertising policy, and the employment and activities of departmental heads and superintendents would be supervised by the management company. Each contract provided that Ernest H. Miller, then president of both Parmelee and of the management company, would, as long as he was president of the management company, perform some of the said management. Miller became a director of Chicago Yellow and of Yellow in May 1929 and held these positions, as well as the presidency of Parmelee and of the management company, until 1932. Miller was, in 1929, and had been, a co-conspirator with Markin in formulating and carrying out the conspiracy charged in this complaint. For these so-called management services Yellow agreed to pay $50,000.00 annually to the Transportation Management Corp., The Parmelee Company agreed to pay $25,000.00 and Yellow Taxi Corp., New York, agreed to pay $50,000.00.

30. About the same time The Transportation Management Corporation agreed to manage the cab-operating companies, it entered into contracts with Markin and Ernest H. Miller. It agreed to pay Markin $25,000.00 annually to act as its management advisor and agreed to pay Miller $50,000.00 annually to act as its general manager. The contract with Miller remained in effect until
18 July 1932. The contract with Markin stated that Markin had no obligation to devote any specified or substantial portion of his time in rendering such services. Markin has continuously, since May 1929, been management advisor to The Transportation Management Corp. and, since May 1934, to its successor, Parmelee.

31. The Transportation Management Corp. was dissolved in May 1934 and its management functions and contracts were assumed by Parmelee. Parmelee continuously owned all of the capital stock of The Transportation Management Corp. from the time it first acquired it until the company was dissolved.

32. The terms of the management contracts described in paragraph 29 hereof have continued in effect substantially unchanged,

through being incorporated in new contracts, except as to the sums paid thereunder, until the date of filing of this complaint. As Parmelee acquired additional subsidiaries following 1929, it caused them to enter into substantially identical management contracts.

33. Automotive Sales Corporation was incorporated in Delaware in April 1929. Three days later all of its stock was purchased by Parmelee for $1,000 and CCM agreed to give it 5 percent commission on all cabs sold by it for CCM prior to April 30, 1934. A few days after the contract was executed, Automotive Sales Corporation ordered 1,000 cabs from CCM for Yellow. Yellow paid $1,906.00 for each of these cabs, and Automotive Sales was paid the sum of $95.30 per cab by CCM as its commission. This sum was included in the price paid by Yellow for said cabs.

34. Cab Sales was incorporated in January 1930, and said company has been managed and operated since that time by defendant Markin, who has been the owner of all outstanding stock of Cab Sales since about 1934. In February 1930, CCM settled litigation between it and Checker. As part of the settlement, Checker agreed that its drivers would purchase all motor vehicles for use as cabs from Cab Sales for a period of five years at a price $2,350 per cab, this price to be adjusted in proportion to changes in the list price of cabs manufactured by CCM. At about the same time, CCM appointed Cab Sales as exclusive agent for sales to Checker and agreed to sell cabs to Cab Sales at $1,906 per cab, this price likewise to be adjusted in proportion to changes in the list price. Thereafter, during the ensuing five years, large numbers of cabs were purchased by Checker drivers from Cab Sales, which in turn purchased said cabs from CCM at prices about $400 lower than the prices paid by said drivers.

35. Cab Sales on May 1, 1931, borrowed the sum of $500,000 from Yellow to finance its acquisition of 51 percent of the capital stock of Checker. Yellow loaned the money to Benzoline Motor Fuel Co., another wholly owned subsidiary of Chicago Yellow, which then reloaned it to Cab Sales. Cab Sales agreed to repay the loan in installments, the last payment to be made in 1941. Part of the consideration for said loan was the agreement by Cab Sales that it and Checker would purchase from Benzoline all gasoline and lubricating oils used in the operation of "Checker" Cabs.

36. In May 1932, Cab Sales defaulted on the first payment due on the said $500,000 loan and Benzoline extended the due dates of payments. In October 1932, Yellow loaned $180,000 to its substantially wholly owned subsidiary, The Waverly Corporation, a holding company, which, during the same month, loaned Cab Sales another $200,000, also to be repaid over a ten-year period.

Waverly made the loan in order that Cab Sales might finance its acquisition of additional shares of Checker.

37. From November 1932 until September 1942, Cab Sales continuously owned more than 97 percent of the capital stock of Checker. In September 1942, Markin caused Cab Sales to sell its holdings in Checker to its present owners in order to make them full associates in Markin's taxicab operations in Chicago.

38. Beginning in the year 1931, some drivers for Checker began to default on their payments for cabs purchased from Cab Sales. About the year 1932, Cab Sales began to foreclose on delinquent mortgage notes and to take over the ownership and operation of cabs. By 1936, Cab Sales actually owned and operated about 500 of the total number of taxicabs licensed to Checker. Thereafter, Cab Sales extended its ownership of cabs licensed to Checker and owned all of them by June 1941. Since that time, it has owned and operated all cabs for which Checker has city taxicab licenses.

39. From the month of May 1931 to the present time, defendant Markin has actually controlled and directed the operation of all taxicabs for which Checker has held licenses from the city of Chicago.

40. In 1933 CCM prevented a divorcement of Yellow from Parmelee. In August of that year, Yellow and Parmelee agreed that Parmelee would sell all of its 48,730 shares of Chicago Yellow stock to Yellow for the purpose, among others, of quieting newspaper criticism of Parmelee as "a gigantic taxicab monopoly spreading over the whole country" and because divorcement of Chicago Yellow from Parmelee might convince the Chicago Board of Aldermen that previous criticism was unjustified and might induce them to raise taxicab rates which the Board had recently reduced. CCM, as owner of more than 51 percent
21 of the stock of Parmelee, objected to this transaction and Parmelee and Yellow agreed to rescind their agreement of sale. In December of the same year, CCM loaned Parmelee $197,500 with which to exercise an option to purchase from Yellow an additional 25,000 shares of stock in Chicago Yellow.

41. By the year 1937, the total number of cab licenses issued by the City of Chicago was 4,071, of which 2,166 or 53 percent were issued to Yellow; 1,500, or 37 percent, were issued to Checker; and 405, or 10 percent, were issued to other cab operato

42. About April 1937 Checker agreed with Yellow to reduce the number of cabs operated under its taxicab licenses. Yellow agreed to pay Checker one-half of the gross revenue lost by the latter by reason of fewer payments from drivers for its services. Pursuant to this agreement Checker reduced its cabs by about 336

during 1937 to a total of 1,164. During the same period Yellow reduced the number of its cabs by 155 to a total of 1,495.

43. In the summer of 1937, at the suggestion of Parmelee, Yellow and Checker agreed to induce the City of Chicago to reduce the total number of taxicab licenses to not more than 3,000, of which 1,500 would be issued to Yellow and 1,000 to Checker.

44. On January 3, 1938, following the enactment of the taxicab ordinance of December 22, 1937, referred to in paragraph 12 of this complaint, a contract was entered into between Yellow, Cab Sales, and Checker, which recited that under the terms of the ordinance of 1934, and by filing acceptance thereof, defendant Yellow had secured to itself the right to hold, own, and operate 2,166 taxicab licenses; the defendant Checker had secured to itself the right to hold, own, and operate 1,500 of said licenses; that

22 defendant Yellow was not operating and had not for more than ninety days operated 511 of the licenses owned by it and did not have equipment available for the purpose of exercising the rights and privileges conferred on it by reason of such licenses, and therefore Checker maintained that each of said 511 licenses was immediately subject to forfeiture on complaint to the Mayor of the City of Chicago in accordance with the provisions of the ordinance of May 18, 1934; that the parties to said contract were desirous of securing a reduction in the number of taxicab licenses in the City of Chicago to not more than 3,000 but that Checker was unwilling to accept the provisions of said ordinance and to relinquish any of its licenses without compensation therefor; and that Yellow was desirous of accepting the provisions of said ordinance and in making possible a reduction in the number of outstanding licenses to 3,000. In view of these considerations, defendant Checker promised to relinquish for cancellation by the City of Chicago 500 taxicab licenses held by it; and to sell to Yellow the right of Checker, under said ordinance, to renew and obtain reissuance of 240 of the said 500 licenses to be surrendered by Checker. Defendant Yellow agreed to pay to Checker the sum of $550 per license for each taxicab license relinquished by Checker up to 500 licenses, for a total payment by Yellow to Checker of $320,000, which, at the option of Yellow, could be paid in the notes issued by Cab Sales in return for the $500,000 and $200,000 loans described in paragraphs 35 and 36 of this complaint. Said contract further provided that in the event that additional licenses above the number of 3,000 should be issued by the City of Chicago, over and above the number of licenses surrendered by Yellow and Checker, that Yellow would apply for and both parties would attempt to secure for it 60 percent of

all such additional licenses; and that Checker would apply
23 for, and both parties would attempt to secure for Checker 40 percent of such additional licenses, to the end that the total number of such additional licenses should be divided between Yellow and Checker on the basis of three-fifths to Yellow and two-fifths to Checker. Pursuant to said agreement, Checker surrendered 500 licenses for cancellation by the City of Chicago.

45. In addition to the above contract, Yellow agreed with Checker that it would surrender to the City of Chicago for cancellation a sufficient number of licenses to bring the total number of licenses down to the figure of 3,000, and Yellow did so surrender 571 licenses.

46. Beginning at some time prior to 1937, the precise time being unknown to plaintiff, and continuing to the date of filing this complaint, Cab Sales and Yellow have exchanged monthly statistics on their respective operations of cabs. Parmelee and CCM have, at various times during this period, acted as the intermediary for the exchange of these reports.

47. In 1938 the General Transportation Casualty Co., a New York corporation, was organized by Chicago Yellow, CCM and Cab Sales, for the purpose, among other things, of insuring taxicab companies against personal injury and property damage claims. In 1939 the company was reorganized and the name changed to the General Transportation Casualty and Surety Co. In 1944, the capital of the corporation was increased and Parmelee became an additional shareholder. This concern insures the cab operations of the defendants.

48. In 1938 Transportation Maintenance Corp., an Illinois corporation, was formed by Chicago Yellow, Parmelee, and Checker
24 for the purpose of servicing all motor vehicles operated by each in the City of Chicago and vicinity. Prior thereto, each had serviced its own vehicles.

49. In the years 1936 and 1937 Yellow made application for and received 2,166 taxicab licenses, although it never operated more than 1,719 cabs at any time during said years, and for a short period it operated only 1,325. During the years 1938 to 1945, inclusive, Yellow applied for and received 1,595 taxicab licenses. The maximum number of cabs operated by it during each of said years is as follows: 1,495 in 1938; 1,351 in 1939; 1,173 in 1940; 1,338 in 1941; 1,450 in 1942; 1,400 in 1943; 1,200 in 1944; and 1,100 in 1945. During the period from June 1944 to January 1946, defendant Yellow has placed on the streets a daily average of less than 1,100 taxicabs. During the period from 1942 to 1946, Yellow continually had in storage 145 taxicabs on which annual licenses were secured, but

which cabs were never removed from storage. Yellow annually applied for and received 1,595 taxicab licenses from 1938 to 1945, knowing it would not utilize all of said licenses to operate cabs.

50. During each of the years 1939 to 1941, inclusive, Checker applied for and received 1,000 taxicab licenses. The maximum number of cabs operated under the licenses during these years is as follows: 927 in 1939; 920 in 1940; and 928 in 1941. During 1945 Checker and Cab Sales together did not have available for operation as many cabs as Checker had licenses; and Checker made application for the renewal of 1,000 licenses in 1945 knowing that neither it nor Cab Sales would utilize all of them to operate cabs.

51. On January 16, 1946, the Board of Aldermen of the City of Chicago passed a resolution authorizing the issuance of 250 licenses to veterans and, on January 22, 1946, the Public Vehicle License Commissioner of the City of Chicago issued notice to Yellow and Checker that he would cancel 234 licenses previously issued to Yellow and 87 previously issued to Checker, by reason of their failure to operate the number of taxicabs for which licenses had been issued.

52. Yellow thereupon instituted suit, in which Checker intervened as party plaintiff, to enjoin the City of Chicago and its officials from issuing said additional 250 licenses and from cancelling existing licenses issued to said defendants, and in support of said suit made representations and filed affidavits with the Court that causes beyond the control of Yellow and Checker made it impossible for them to procure taxicabs to replace those which had become inoperable, or to procure new parts for replacement in and repair of their taxicabs. In fact, Yellow, Checker, and Cab Sales could have purchased and placed in operation enough additional motor vehicles to operate a cab for each license if they had been willing and free to purchase motor vehicles manufactured by others than CCM.

VI

EFFECTS OF THE CONSPIRACY

53. The aforesaid combination and conspiracy has had, as was intended by the defendants herein, the following effects:

"(1) Competition between Checker, Cab Sales, and Yellow has been eliminated;

"(2) Competition between Checker, Cab Sales, and Yellow, on the one hand, and Parmelee, on the other hand, in the transportation of passengers and their luggage in the City of Chicago and vicinity has been eliminated and prevented;

"(3) Since the year 1929, Yellow, Checker, Cab Sales, Parmelee, and Parmelee's cab operating subsidiaries in New York, Pittsburgh, and Minneapolis have been prevented and precluded from purchasing new motor vehicles for use as cabs from any manufacturer other than CCM, and other manufacturers of motor vehicles capable of use as cabs have been excluded from the opportunity of competing for said business;

"(4) By reason of said conspiracy, Yellow, Checker, and Cab Sales, and Parmelee and its subsidiaries, have been required to pay more for motor vehicles purchased and operated by them as cabs than they would have had to pay in the absence of said conspiracy, and other expenditures by said cab operating companies have been unnecessarily increased, which unnecessary expenditures have been reflected in, and have resulted in, high rates being charged the public for the transportation services rendered by said companies;

"(5) By reason of said conspiracy, defendants have successfully excluded others, including veterans, from the opportunity to secure taxicab licenses from the city of Chicago and from the opportunity of participating in the operation of cabs in said city and its vicinity.

"(6) By reason of said conspiracy, Yellow, Checker and Cab sales have not operated their cabs to the extent reasonably necessary to meet the public demand for cab service."

PRAYER

Wherefore, Plaintiff prays:

A. That, pursuant to Section 5 of the Sherman Act, an order be made and entered herein requiring each of the defendants as are not within this District to be brought before the Court in this proceeding as parties defendant, and directing the
27 Marshals of the Districts in which they severally reside to serve summons upon them.

B. That the aforesaid combination and conspiracy in restraint of trade and conspiracy to monopolize be adjudged and decreed to be unlawful.

C. That defendants be required to release and waive any and all rights they may have or claim to have under the ordinance of the City of Chicago of December 22, 1937, and its extension, to secure additional taxicab licenses in excess of the number now held by Yellow and Checker.

D. That the agreement of January 3, 1938, between Yellow, Cab Sales, and Checker be declared to be illegal and of no force and

effect, and that each party thereto be enjoined from enforcing, from attempting to enforce, and from observing any of the provisions thereof, and from entering into any similiar agreement or understanding.

E. That the agreement between Parmelee and Markin, by which Markin is employed as advisor to Parmelee, shall be declared to be illegal and of no force and effect, and that Parmelee and Markin be enjoined from enforcing or attempting to enforce, and from observing any of the provisions thereof, and from entering into any similar agreement or understanding.

F. That all so-called management contracts entered into between Yellow, Chicago Yellow, and Parmelee or any of its subsidiaries, be declared to be illegal and of no force and effect, and that each defendant be enjoined from enforcing or at attempting to enforce them, from observing any of the provisions
28 thereof, and from entering into any similar agreement or understanding.

G. That Markin be required to divest himself of all stock or other interest in, or control over, Yellow, Chicago Yellow, Parmelee and all subsidiaries or affiliates of Parmelee, and be enjoined from hereafter acquiring any interest in, or ownership of stock of, or any control over any defendant or its subsidiaries other than CCM, Cab Sales, and Checker.

H. That the corporate defendants be required to divest themselves of all interest in, and ownership of stock of, each other, and of control of each other, to the end that each of the following groups of defendants shall be independent of, and free to compete with, each other:

1. CCM, Cab Sales, and Checker;

2. Parmelee, Yellow Taxi Co. of Minneapolis, Yellow Cab Co. of Pittsburgh, Pittsburgh Transportation Co., and National Transportation Co., Inc.;

3. Yellow and Chicago Yellow.

I. That each corporate defendant be enjoined from hereafter acquiring any interest in, or ownership of stock of, or any control over, any defendant or its subsidiaries other than one in its own group as stated in the preceding paragraph.

J. That either Chicago Yellow or Cab Sales be required to divest itself of all of its interest in and ownership of the stock of Transportation Maintenance Corporation, so that there shall be no community of interest in, or control over, said Transportation Maintenance Corporation by Chicago Yellow and Cab Sales.

K. That the plaintiff have such further, general and different relief as the nature of the case may require and the Court may deem proper in the premises.

29

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30 In the District Court of the United States

[Title omitted.]

Motion of defendants, Yellow Cab Company; Chicago Yellow Cab Company, Inc.; Parmelee Transportation Company; Cab Sales and Parts Corporation; Checker Taxi Company; Checker Cab Manufacturing Corporation, and Morris Markin, to dismiss the complaint for failure to state a claim

Filed Sept. 16, 1946

The above-named defendants, moving on one set of motion papers for the convenience of the Court and reserving the right of each moving defendant to be heard through its own counsel on

these motions, hereby do separately and severally move the court pursuant to Rule 12 (b) of the Federal Rules of Civil Procedure for judgment dismissing the complaint for failure to state a claim against the defendants upon which relief can be granted by this Court. In the alternative, they do further move for partial judgment pursuant to Rule 12 (b) of the Federal Rules of Civil Procedure, dismissing from the complaint for failure to state a claim against the defendants upon which relief can be granted by this Court, the following portions of said complaint.

1. All of paragraphs 4, 5, 6, 19 (except subparagraphs (a) and (b)), 20–52, 53 (except subparagraph (3)), and the Prayer (except Paragraph A).

31 2. The words "and in the business of furnishing cab services for hire in the City of Chicago, Illinois, and its vicinity" in paragraph 18.

3. The words "the operation and" in paragraph 19 (a), and the words "and use as cabs" and the words "for such use, or use" in paragraph 19 (b).

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Parmelee Transportation Company.

Received a copy of the foregoing motion and brief and appendices of defendants in support thereof this 16th day of September 1946.

(S) MELVILLE C. WILLIAMS,
Attorney for Plaintiff.

32 In the District Court of the United States for the Northern District of Illinois, Eastern Division

Civil Action No. 46 C 1339

UNITED STATES OF AMERICA, PLAINTIFF

v.

YELLOW CAB COMPANY, ET AL., DEFENDANTS

Memorandum

Filed Nov. 16, 1946

This is an action by the government under Section 4 of the Sherman Act (15 U. S. C. A. Sec. 4) seeking relief against an alleged conspiracy and combination to restrain and to monopolize trade in violation of sections 1 and 2 of that Act. Defendants have filed motions to dismiss the complaint under Rule 12 (b) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief can be granted.

The action is brought against six corporations and one individual. Checker Cab Manufacturing Corporation manufactures motor vehicles in Michigan for use as cabs. Its president is Morris Markin, a resident of Michigan. The Manufacturing Corporation and Markin will both be referred to hereinafter as "CCM." Chicago Yellow Cab Company, Inc., owns all of the capital stock of Yellow Cab Company, which operates "Yellow" taxicabs in Chicago. Checker Taxi Company holds taxicab licenses issued by the City of Chicago and leases such licenses to Cab Sales and Parts Corporation which operates "Checker" taxicabs in Chicago. Yellow Cab Company, Checker Taxi Company and Cab Sales and Parts will hereinafter be referred to as "the taxicab operating companies." Parmelee Transportation Company operates vehicles in Chicago to transport passengers and their luggage from one railroad station to another pursuant to contracts with railroads and railroad terminal associations.

33 The complaint contains many allegations designed to show that CCM under contracts, understandings and stock acquisitions has such control of the taxicab operating companies and Parmalee that the latter are required to purchase their vehicles from CCM. No end is served by here summarizing these allegations. The court assumes for the purpose of the motion before us that CCM so controls the taxicab operating companies and Parmelee.

Although containing only one count the complaint actually charges two conspiracies. It charges, first, that the defendants

have conspired to restrain commerce in the transportation by taxicabs of railroad passengers between, to and from railroad stations located in the city of Chicago. It charges, second, a conspiracy to restrain interstate trade in the sale of motor vehicles for use as cabs.

The scope of the first of these charges is all-important. The legality or illegality of any restrains alleged in the complaint must be tested solely by their effect on the transportation by taxicabs of railroad passengers coming to or leaving Chicago. The government does not claim that any such restraints affect the business of railroads or the transportation of railroad passengers except to the extent stated. The basic question on this charge is, therefore, whether the operating companies, to the extent that they transport by taxicabs interstate railroad passengers between, to and from railroad stations, are engaged in interstate commerce.

This is not the first time this issue has been presented to a court for determination. The United States Supreme Court in New York ex rel. Pennsylvania R. R. Co. v. Knight (1904), 192 U. S. 21, held that identical taxicab services were not interstate commerce but an independent local service preliminary or subsequent to interstate transportation. The Supreme Court has frequently referred to that decision and in each instance has treated it as correct. Swift and Company v. United States (1905), 196 U. S. 375, 401; Stafford v. Wallace (1922), 258 U. S. 495, 528. And, this court is of the opinion that the decision in the Knight case is predicated on sound legal principles.

34 The Knight case is not disposed of by the fact, as urged by the government, that the court might have based its decision on other grounds. Nor do the many decisions under acts such as the National Labor Relations Act and the Fair Labor Standards Act, relied on by the government, weaken its force. These acts extended federal control over a wide area of intrastate activity which affects interstate commerce. Here, however, the question is whether defendants' taxicab operations are interstate commerce. But even under these acts the one case involving taxicab operations held them to be intrastate. Ridley v. General Cab Company, CCH 6 Labor Cases, 61, 374. Also, in the Knight case the court made the following statement:

"As we have seen, the cab service is rendered wholly within the State and has no contractual or necessary relation to interstate transportation. It is either preliminary or subsequent thereto. It is independently contracted for, and not necessarily connected therewith."

To prove interstate character, the government points to the fact that defendants' taxicabs render services to interstate railroad pas-

sengers. The mere rendering of local services to an interstate passenger cannot transform an intrastate business into an interstate enterprise. To so hold would obviously result in obliterating the historical and sound distinction between the two types of commerce. The government urges as an important element the fact that railroad stations in Chicago are designed to facilitate the use of taxicabs for the convenience of the interstate railroad passengers. But many railroad stations are also designed to afford easy access to other local services for the convenience of passengers. Thus, in Chicago at least two of the largest stations are specially designed to provide its passengers with easy means of access to the elevated lines. A number of railroad depots also provide accommodations for private automobiles. Stations in other cities are specially designed to furnish railroad passengers with access to large hotels. Can it be logically urged that because of these arrangements for the convenience of the passengers, the elevated lines or such hotels are engaged in interstate commerce. As was stated in the Knight case:

35 "** * * many things have more or less close relation to interstate commerce, which are not properly to be regarded as a part of it. If the cab which carries the passengers from the hotel to the ferry landing is engaged in interstate transportation, why is not the porter who carries the traveler's trunk from his room to the carriage so engaged? If the cab service is interstate transportation, are the drivers of the cabs and the dealers who supply the hay and grain for horses also engaged in interstate commerce? And where will the limit be placed?"

The following facts either appear in the complaint, are of common knowledge, or have been admitted in briefs and arguments. A railroad passenger upon his arrival in Chicago may freely choose one of several methods of local transportation whether he be going to another station or to any other point in the city. Such passenger, prior to his arrival, makes no arrangement with any railroad or with anyone else for the hire of a taxicab in Chicago. If, upon arrival, he determines to take a taxicab he makes arrangements for carriage with the taxicab driver and is transported to another point in Chicago or its vicinity. The defendants' taxicabs do not cross state lines. The railroad passenger has control of the taxicab both as to contents, direction and time of use. He pays his taxicab fare to the taxicab driver at a rate fixed by the City of Chicago and the railroads have no control or interest in that fare. The carriage of a railroad passenger by any particular taxicab is casual and incidental and the number of taxicab trips in which interstate railroad passengers are transported is a small part of the total number of taxicab trips in Chicago. Finally, no corporate

contractual or other relationship in the nature of integration exists between the railroads and the taxicab companies.

No one of the foregoing elements, of course, is determinative. But as the Supreme Court has held, the determination of whether particular commerce is interstate or intrastate is a "practical" matter "drawn from the course of business". Swift and Company v. United States, supra. Considering the entire course of business of the taxicab companies, the court concludes that such business, as held in the Knight case, is an independent local service preliminary or subsequent to any interstate transportation. In the
36 court's judgment, therefore, the complaint fails to state a claim under the Sherman Act insofar as the transportation of interstate railroad passengers is concerned.

In addition the court is of the opinion that the complaint fails to set forth such facts as are necessary to show that the defendants conspired to or did restrain trade. The existence and legality of that restraint must be determined with respect to the transportation by taxicabs of interstate railroad passengers between, to and from railroad stations in Chicago. The complaint contains no allegations showing a conspiracy directed to, or in restraint of, that commerce. There is no allegation that defendants agreed upon the rates to be charged for the transportation of interstate railroad passengers. There is no allegation that insufficient taxicabs are furnished for the transportation of such railroad passengers. There is no allegation that defendants have otherwise restrained such commerce. The complaint instead proceeds on the theory that defendants conspired to restrain generally the business of furnishing cab services for hire in the City of Chicago and leaves to assumption and inference the effect upon one small segment, of that general business—the transportation of interstate railroad passengers. Such vital elements in the statement of a claim cannot be left to inference and speculation.

The complaint also alleges defendants have conspired to restrain and monopolize interstate trade in the sale of motor vehicles for use as cabs. The complaint proceeds on the theory that CCM has a monopoly of the sale of taxicabs in Chicago alone because the taxicab operating companies held about 80% of the taxicab licenses issued by the City. The complaint does mention three other cities, New York, Minneapolis and Pittsburgh. There patently exists no monopoly in the first two cities in which CCM subsidiaries operate 2,000 of the 13,000 and 125 of the 214 taxicabs respectively. The allegations with respect to conditions in Pittsburgh are too vague to determine the situation in that city. But the complaint does not charge that CCM has a monopoly in the manufacture of taxicabs or a monopoly in the general sense of the sale of taxicabs. It is a matter of common knowledge that the

37 large automobile manufacturers produce and sell the great majority of vehicles used as taxicabs.

The State of Illinois has by statute delegated to the City of Chicago (Cities and Villages Act, Smith-Hurd Ill. Ann. Stats., Ch. 24, Secs. 23–28, 10, 27, 51, 78) power to regulate the taxicab industry in Chicago. The City of Chicago has in turn enacted a series of ordinances governing the licensing and operation of taxicabs in Chicago. (Ordinances of September 25, 1929; May 18, 1934; December 22, 1937; June 26, 1945.)

The court is of the opinion that the charge does not state a claim under these facts. Such restraint as exists in this case necessarily results from the acquisition by CCM of the control of two outlets for purchase of CCM's product. The nature of the restraint is that the outlets are thereby prevented from buying vehicles from manufacturers other than CCM or conversely that manufacturers other than CCM are prevented from selling vehicles to the outlets. Restraints of this nature are not frowned upon by the law. They are common and are inherent in the acquisition by a manufacturing company of outlets regardless of whether the manufacturer creates the outlets or acquires them by purchase or under exclusive agency arrangement. Exclusive dealing arrangements of this nature are normal, usual and customary business practices and their legality under the Sherman Act has long been recognized. United States v. Winslow (1913), 227 U. S. 202; United States v. United States Steel Corp. (1920), 251 U. S. 417; Black and White Taxicab and Transfer Company v. Brown and Yellow Taxicab and Transfer Company (1928), 276 U. S. 518; United States v. Paramount Pictures (1946), 66 F. Supp. 323.

The effect of the restraint on interstate commerce is plainly inconsequential. It consists solely of sales of one product by one comparatively small manufacturer to two companies which have about 80% of one type of business in one city in the United States. It consists of sales of 2,500 taxicabs out of many thousand sold in interstate commerce. Such effect is clearly too unsubstantial
38 to meet the test laid down for a violation of the Sherman Act. Apex Hosiery Co. v. Leader (1939), 310 U. S. 469; United Mine Workers of America v. Coronado Coal Company (1922), 259 U. S. 344; Glenn Coal Company v. Dickinson Fuel Company (C. C. A. 4, 1934), 72 F. (2d) 885.

The court, therefore, finds nothing illicit in the nature of the restraint resulting from CCM's acquisition of control of the taxicab operating companies.

The charge must fail, however, for a more decisive reason. If illegality attaches to CCM's acquisition of the taxicab operating companies such illegality must lie in the fact that the operating companies hold 80% of the licenses issued by the city. It is appar-

ent from the relief prayed in the complaint that this suit would not have been filed had CCM controlled only one operating company or had both operating companies held less than a majority of the licenses issued by the city. It is obviously indispensable to the theory of the complaint that the taxicab operating companies hold the great preponderance of licenses issued by the city. The government's theory therefore resolves itself into an attack on the validity of the city's taxicab ordinances or on the validity of the city's issuance of licenses to the taxicab operating companies.

The Sherman Act contains no authority for such an attack on the city's power or exercise of such power. The courts have uniformly held that the licensing and regulation of the taxicab industry is a subject for exercise solely by a municipality under its police power. This court and the courts of Illinois have held Chicago's taxicab ordinances a valid exercise by the city of its police power and they have held that the issuance by the city of a majority of the taxicab licenses to the defendant operating companies in this case does not create a monopoly. Capitol Taxicab Co. v. Cermak (C. C. A. 7, 1932), 60 F. (2d) 608; People v. Thompson (1930), 341 Ill. 166; Chicago v. Dorband (1938), 297 Ill. App. 617; Chicago v. Eagle Taxi Co. (1933), 273 Ill. App. 614; Yellow Cab Company v. City of Chicago, Circuit Court of Cook County, No. 46 C 943, unreported, 1946. In Rudack v. Valentine (Spec. Term, N. Y. 39 County, 1937), 163 Misc. 326, 295 N. Y. S 976, aff'd (1937) 274 N. Y. 615, 10 N. E. (2d) 577, the court held that the licensing and regulation of the taxicab industry is a valid exercise of a municipality's police power. The court pointed out that in substantially all cities the taxicab industry is treated as a public utility under local regulations.

It is not for the court to determine whether the city has acted wisely or unwisely in issuing the majority of its licenses to one interest or to two corporations owned or controlled by the same interest. It is a question rather for the determination of the city in the public interest of its citizens. The Sherman Act, as the Supreme Court has held, does not include within its reach such restraints as necessarily flow from the regulation of local problems by local governmental bodies. Parker v. Brown (1943), 317 U. S. 341; Field v. Barber Asphalt Paving Company (1904), 194 U. S. 618.

With respect to Parmelee, the complaint makes two claims. First, it is alleged that Parmelee will not compete with the taxicab operating companies for the latter's business. This claim must refer to the taxicab companies' business other than the transportation of interstate railroad passengers. Since this remaining business is concededly intrastate business no basis exists for holding this claim within the reach of the Sherman Act. Second, it is alleged

that the taxicab operating companies will not attempt to compete with Parmelee for contracts with railroads or railroad terminal associations for the transportation of railroad passengers and their luggage. Having in mind a commonly known fact that the taxicab business is totally different from Parmelee's both from a standpoint of equipment used and services rendered, the court is of the opinion the allegations referred to are insufficient to charge a conspiracy to restrain trade in this respect. Further, the court is unfamiliar with any principle of law that requires a corporation in an integrated enterprise to compete with an affiliated corporation.

For the reasons indicated defendants' motion to dismiss should be sustained.

Walter J. La Buy.
WALTER J. LA BUY,
Judge, United States District Court.

40 In the District Court of the United States for the Northern District of Illinois, Eastern Division

Civil Action No. 46C 1339

UNITED STATES OF AMERICA, PLAINTIFF

v.

YELLOW CAB COMPANY, ET AL., DEFENDANTS

Order of dismissal

Dec. 2, 1946

This cause coming on to be heard on defendants' motions to dismiss the complaint for failure to state a claim upon which relief can be granted, the Court having heard oral argument, having considered the briefs submitted in support of the motions and in opposition thereto, and having found that the complaint does not state a claim upon which relief can be granted,

It is hereby ordered, adjudged, and decreed that defendants' motions to dismiss the complaint for failure to state a claim be and they are hereby granted: and

It is hereby further ordered, adjudged, and decreed that this action be, and it hereby is, dismissed.

December 2nd, 1946.

Walter J. La Buy,
WALTER J. LA BUY,
District Judge.

Agreed to as to form this 29th day of November 1946.

John C. Herberg,
JOHN C. HERBERG,
Special Assistant to the Attorney-General.

41 In the District Court of the United States

[Title omitted.]

Petition for appeal

Filed Jan. 27, 1947

The United States of America, plaintiff in the above-entitled cause, considering itself aggrieved by the final judgment of this Court entered on the second day of December 1946, does hereby pray an appeal from said final judgment to the Supreme Court of the United States. Pursuant to Rule 12 of the Rules of the Supreme Court plaintiff presents to this Court herewith a statement showing the basis of jurisdiction of the Supreme Court to entertain an appeal in this cause.

The particulars wherein the plaintiff considers the judgment erroneous are set forth in the assignment of errors and prayer for reversal accompanying this petition and to which reference is hereby made.

Plaintiff prays that this appeal may be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings, and documents upon which said final judgment was based, duly authenticated, be sent to the Supreme Court of the United States under the rules of said Court in such cases made and provided.

(S) WENDELL BERGE,
Assistant Attorney General.
(S) MELVILLE C. WILLIAMS,
Special Assistant to the Attorney General.

Dated this 27th day of January 1947.

51 In the District Court of the United States

[Title omitted.]

Assignment of errors and prayer for reversal

Filed Jan. 27, 1947

The United States of America, plaintiff in the above-entitled cause, in connection with its petition for appeal to the Supreme Court of the United States, hereby assigns error to the record and proceedings and the entry of the final decree in the district court on December 2, 1946, in the above-entitled cause, and says that in the entry of the final decree the district court committed error to the prejudice of the plaintiff in the following particulars:

1. The court erred in holding that the complaint charges two conspiracies.

2. The court erred in holding that the complaint does not set forth a conspiracy illegally to restrain and to monopolize interstate commerce in taxicabs.

3. The court erred in holding that the allegations of the complaint respecting defendants' control over all companies operating taxicabs in Pittsburgh and over interstate sales of taxicabs to such companies "are too vague to determine the situation" in Pittsburgh.

4. The court erred in holding that, upon the allegations of the complaint, the interstate commerce in taxicabs restrained or monopolized by defendants was too unsubstantial to constitute a violation of the Sherman Act.

52 5. The court erred in holding that defendant's conspiracy to bring under common control the principal companies operating taxicabs in several leading cities, with the effect and purpose of excluding all manufacturers of taxicabs other than CCM from the business of selling taxicabs to such companies in interstate commerce, did not violate Sections 1 and 2 of the Sherman Act.

6. The court erred in holding that the transportation by cab of railroad passengers between, to, and from railroad stations in Chicago is not interstate commerce.

7. The court erred in failing to hold that the charge in the complaint that Yellow and Checker, pursuant to defendants' conspiracy, agreed not to compete with Parmelee for contracts with railroads or railroad terminal associations to transport passengers between railroad stations in Chicago, sets forth an illegal restraint and illegal monopolization of interstate commerce.

8. The court erred in holding that the charges made in the complaint constitute an attack upon the validity of the taxicab ordinances of the city of Chicago.

9. The court erred in holding that the conspiracy charged in the complaint, insofar as it relates to cab operations in the city of Chicago, is beyond the reach of the Sherman Act under the holding in Parker v. Brown, 317 U. S. 341.

10. The court erred in failing to hold that the allegations of the complaint, showing that defendants conspired to exclude from the business of carrying passengers between, to, and from railroad stations in Chicago all persons other than the holders of outstanding taxicab licenses issued by the city of Chicago, set forth a conspiracy in illegal restraint and illegal monopolization of interstate commerce.

11. The court erred in granting defendants' motions to dismiss the complaint for failure to state a claim upon which relief can be granted.

12. The court erred in dismissing the complaint.

53 Wherefore, plaintiff prays that the final decree of the district court may be reversed to the extent that it is inconsistent with the errors herein assigned by the plaintiff, and for such other and fit relief as the court may deem just and proper.

(S) WENDELL BERGE,
Assistant Attorney General.

(S) MELVILLE C. WILLIAMS,
Special Assistant to the Attorney General.

Dated this 27th day of January 1947.

54 In the District Court of the United States

[Title omitted.]

Order allowing appeal

Jan. 27, 1947

In the above-entitled cause the United States of America, plaintiff, having made and filed its petition praying an appeal to the Supreme Court of the United States from the final judgment of this Court in this cause entered on the 2d day of December, 1946, and having also made and filed its petition for appeal, assignment of errors and prayer for reversal, and statement of jurisdiction, and having in all respects conformed to the statutes and rules in such cases made and provided.

It is therefore ordered and adjudged that the appeal be and the same is hereby allowed as prayed for.

(S) WALTER J. LA BUY,
United States District Judge.

Dated this 27th day of January 1947.

55 [Citation in usual form, filed Jan. 27, 1947, omitted in printing.]

57 In the District Court of the United States

[Title omitted.]

Praecipe for transcript of record

Filed January 27, 1947

To The Clerk, United States District Court, Northern District of Illinois, Eastern Division.

The appellant hereby directs that, in preparing the transcript of the record in the above entitled cause for its appeal to the Supreme Court of the United States, you include the following:

1. Docket entries showing filing of the pleadings and papers hereinafter set forth, and the entry of the orders hereinafter specified.
2. Complaint.
3. Motion of defendants to dismiss complaint.
4. Order granting defendants' motion to dismiss complaint, entered December 2, 1946.
5. Opinion of Honorable Walter J. La Buy filed November 16, 1946, as amended by order filed November 22, 1946.
6. Petition for appeal.
7. Assignment of errors and prayer for reversal.
8. Statement as to jurisdiction.
9. Order allowing appeal.
10. Citation.
11. Statement calling attention to the provisions of Supreme Court Rule 12 (3).
12. Praecipe for transcript of record.

58 13. Proof of service of:

a. Petition for appeal;
b. Order allowing appeal;
c. Assignment of errors and prayer for reversal;
d. Statement as to jurisdiction;
e. Citation;
f. Statement calling attention to the provisions of Supreme Court Rule 12 (3);
g. Praecipe for transcript of record.

(S) MELVILLE C. WILLIAMS,
Special Assistant to the Attorney General.

In United States District Court

Judge La Buy Calendar—46C1339

Title of case: United States of America vs. Yellow Cab Company; Chicago Yellow Cab Company, Inc.; Parmelee Transportation Company; Cab Sales and Parts Corporation; Checker Taxi Company; Checker Cab Manufacturing Corporation; and Morris Markin.

ATTORNEYS

For Plaintiff:

George B. Haddock, Special Assistant to the Attorney General, Suite 820, 208 S. LaSalle St., Chicago 4, Illinois.

For Defendants:

Jesmer and Jesmer, 100 N. LaSalle St.; Weymouth Kirkland, Howard Ellis, A. L. Hodson and John F. Floberg, 33 N. LaSalle

St.; Winston, Strawn and Shaw, First National Bank Bldg.; see att. sheet for Attys.

86 Receipts, remarks, etc.: "Sherman Antitrust Suit."

Date	Filings—Proceedings	Clerk's fees	
		Plaintiff	Defendant
7-25-46	Filed Complaint and 7 copies (JS5)	$15.00	U. S.
7-25-46	Issued 5 Summons and 5 copies, with copy of complaint attached to each Summons, to the U. S. Marshal, Chicago, for the following defendants: Yellow Cab Co., Chicago Yellow Cab Co., Inc., Parmelee Transportation Co., Cab Sales & Parts Corp. and Checker Taxi Co. (R. W.).		
7-25-46	Filed Motion of Pltf.		
7-25-46	Enter order for the issuance of summons to nonresident Defts. Draft—La Buy, J.		
7-25-46	Issued and mailed 2 Summons and 2 copies, with copy of Complt. attached to each Summons, to the U. S. Marshal at Grand Rapids, Mich., re Checker Cab Mfg. Co., Kalamazoo, Mich., and Morris Markin, c/o Checker Cab Mfg. Corp., Kalamazoo, Michigan. Mailed notice to Pltf.'s attorney of order entered 7/25/46.		
7-26-46	Mailed certified copy of Complaint filed 7/25/46 to Anti-Trust Div. (W).	2.60	U. S.
7-31-46	Filed Summons returned served on Parmelee Transportation Co	2.00	
7-31-46	Filed Summons returned served on Checker Taxi Co. (1 Ser.)	2.00	
7-31-46	Filed Summons returned served on Cab Sales and Parts Corp. (1 Ser.) (W).	2.00	
7-31-46	Filed Appearance of Jesmer and Jesmer, attorneys (W)		
8- 1-46	Filed Appearance of Yellow Cab Co., et al. and their attorneys (W).		
8- 5-46 87	Filed Appearances of Checker Cab Mfg. Corp. and Morris Markin, defendants, and attorneys Winston, Strawn and Shaw.		
8- 5-46	Filed Summons returned served on Checker Mfg. Corp. (Fee)	4.94	
8- 5-46 87	Filed Summons returned served on Morris Markin (Fee)	2.00	B.
8-12-46	Filed Appearance of Parmelee Transportation Co. and its attorneys, Ringer, Reinwald & Sostrin (R. W.).		
8-13-46	Filed Stipulation.		
8-13-46	Defendants' time to answer or otherwise plead is extended to Sept. 16, 1946. Draft—Igoe, J. (R. W.). Mailed notice to attorneys on 8/14/46 (R. W.).		
8-16-46	Filed Summons returned served—1 Service on Yellow Cab Co.		2.00 D
8-16-46	Filed Summons returned served on Chicago Yellow Cab Co. (1 Service).		2.18 D
9-16-46	Filed Motion of certain defendants to dismiss Complaint.		
9-16-46	Filed Brief for defendants in support of motion to dismiss, etc.		
9-16-46	Filed Appendices to Brief for defendants, etc. (W).		
9-24-46	Filed Stipulation.		
9-24-46	By stipulation time for plaintiff to file answering brief to defendant's motion to dimiss extended to October 1, 1946—Draft—La Buy, J. Mailed notice to attorneys 9-25-46 (mk).		
10/2/46	Filed Proof of Service of Brief (mk).		
10- 9-46	Arguments on motion to dismiss set for Oct 18, 1946 at 10:15 a. m. La Buy, J. Mailed notice to attorneys 10-10-46 (mk).		
10-18-46	On motion of A. L. Hodson leave given Samuel H. Kaufman and Harold S. Lynton, members of the New York Bar, to participate in this hearing on behalf of defendants. Arguments heard and concluded on motion to dismiss the complaint, and said motion taken under advisement.—La Buy, J. Mailed Notice to Attorneys 10/22/46 (W)		
11-16-46	Filed Memorandum of Judge La Buy (W).		
11-19-46	Filed Transcript of proceeding before Hon. W. J. La Buy, J. of 10-18-46 (mk).		
11-22-46 88.	Enter order amending on its face, memorandum of Judge La Buy filed on Nov. 16, 1946 by inserting the word "taxicabs" after the word "yellow" on line 15 of page 1, by substituting the word "intrastate" for the word "interstate" at the end of line 6 and the beginning of line 7 on page 3, by substituting the word "requires" for the word "prohibits" on line 33 of page 8, and by substituting the words "to compete" for the words "from competing" on line 34, page 8—La Buy, J. Mailed Notice to Attorneys 11/25/46 (w).		

Date	Filings—Proceedings	Clerk's fees	
		Plaintiff	Defendant
12- 2-46	Enter Order granting defendants' motions to dismiss complaint —Draft—La Buy. J. (J86). Mailed notice to attorneys 12-3-46 (mk).		
12- 4-46	Issued Certified copy of Order of Dismissal (mk)	$10	U. S.
1-27-47	Filed Petition for Appeal by plaintiff and Statement as to Jurisdiction.	5.00	U. S.
1-27-47	Filed Assignment of Errors and Prayer for Reversal.		
1-27-47	Filed Praecipe for Transcript of Record.		
1-27-47	Filed Proof of Service.		
1-27-47	Filed Statement calling attention to Supreme Court Rule 12 (3).		
1-27-47	Enter order allowing appeal—Draft—Enter order of citation—Draft—La Buy, J. Mailed Notice to Attorneys 1/28/47 (w). Filed Citation.		
2-11-47	Filed 2 Motions to Dismiss or Affirm (w).		

89 [Clerk's certificate to foregoing transcript omitted in printing.]

90 In the Supreme Court of the United States

October Term, 1946

No. 1035

Statement of points to be relied upon and designation of parts of the record necessary for consideration thereof

Filed March 19, 1947

1. Now comes the Appellant in the above cause and for its statement of points upon which it intends to rely in its appeal in this Court adopts the points contained in its Assignment of Errors heretofore filed herein.

2. The entire record in this cause as filed in this Court pursuant to the appellant's praecipe to the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, is necessary for the consideration of the foregoing points and Appellant designates said entire record for printing by the Clerk of this Court.

GEORGE T. WASHINGTON,
Acting Solicitor General.

Dated March 18, 1947.

91 I hereby certify that I have this day served a copy of the foregoing Statement of Points to be Relied Upon and Designation of Parts of the Record Necessary for Consideration thereof on counsel for the Appellees by mailing a copy to each of the following: Kirkland, Fleming, Green, Martin & Ellis, 33 North

LaSalle Street, Chicago, Illinois, Counsel for Yellow Cab Company and Chicago Yellow Cab Company. Samuel Kaufman, 30 Broad Street, New York (4), N. Y., and Winston, Strawn & Shaw, 38 South Dearborn Street, Chicago, Illinois, Counsel for Checker Cab Mfg. Corp. and Morris Markin. Jesmer & Jesmer, 100 North LaSalle Street, Chicago, Illinois, Counsel for Checker Taxi Company and Cab Sales & Parts Corporation. Ringer, Reinwald & Sostrin, 160 North LaSalle Street, Chicago, Illinois, Counsel for Parmelee Transp. Co.

George T. Washington
GEORGE T. WASHINGTON,
Acting Solicitor General.

MARCH [illegible]7.

94 Supreme Court of the United States

No. 1035, October Term, 1946

Order noting probable jurisdiction

March 17, 1947

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

[Endorsement on cover:] File No. 51899. Northern Illinois D. C. U. S. Term No. 1035. The United States of America, Appellant, vs. Yellow Cab Company, Chicago Yellow Cab Company, Inc., Parmelee Transportation Company, et al. Filed February 17, 1947. Term No. 1035 O. T. 1946.

U. S. GOVERNMENT PRINTING OFFICE: 1947